

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 17 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE D.P.BUCH

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1. Whether Reporters of Local Papers may be allowed : YES
to see the judgements?

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?

4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge? : NO

MOHAN DYALDAS SINDHI

Versus

KRUSHNSINH NATVARSHINH RANAVAT

Appearance:

MR SS PANESAR for Petitioner
MR AJAY R MEHTA for Respondent No. 1

CORAM : MR.JUSTICE D.P.BUCH

Date of decision: 21/03/2000

ORAL JUDGEMENT

The petitioner has preferred this Civil Revision Application under Sec.115 of the Code of Civil Procedure Code, 1908, challenging the judgement and order dtd.18/12/99 recorded by the learned Joint District Judge, Panchmahals at Godhra in Civil Misc. Appeal NO.

150 of 1999 dismissing the said appeal and confirming the judgement and order dtd. 13/9/99, recorded below Ex.5, 54 and 68 by the learned Civil Judge (J.D.) at Santrampur in Regular Civil Suit No.73 of 1998 under which the trial court granted interim mandatory injunction directing to have status-quo as on 12/10/98 in respect of possession of the suit Cabin and also issuing interim injunction preventing the present petitioner from forcibly removing the respondents from the possession of the disputed Cabin without due process of law.

2. The respondent abovenamed has preferred aforesaid Civil Suit stating that a Cabin belonging to the present petitioner was handed over to him by the petitioner in May, 1994, since the respondents advanced a sum of Rs.10,000/-, since then the respondent is in possession and the petitioner was attempting to dispossess the present respondent, therefore, the suit was filed for perpetual injunction preventing the petitioner from dispossessing the respondents. An application at Ex.5 was filed by the respondents with similar prayer during the pendency of the suit. Show Cause Notice was issued and the petitioner appeared before the Trial Court and contested the application as well as the suit.

3. Thereafter, the respondent submitted an application at Ex.54 stating that the petitioner has forcibly taken over the possession of the disputed Cabin, and therefore, possession should be restored back to the respondent. After hearing the parties, the learned trial court found that the respondent was illegally dispossessed during the pendency of the hearing of the said interim application, therefore the aforesaid injunction application both mandatory and prohibitory were issued by the trial court by order dtd.13/9/99.

4. The matter was taken before the Appellate Court and the learned judge confirmed the said finding and dismissed the appeal.

5. Feeling aggrieved by the said judgements and orders of the two courts below, the petitioner has preferred this Civil Revision Application. I have heard Mr. S.S. Panesar and Mr. Ajay R. Mehta, learned advocate for the respective parties. I have perused the papers available to me.

6. Learned advocate for the petitioner has vehemently contended that the petitioner was in possession in respect of the suit Cabin on the date of the suit and that fact has been established by the

records. He referred two reports of the Commissioner. The reports of the Commissioner cannot be used for proving the possession of either of the parties, therefore neither of the two reports can prove *prima facie* possession by itself.

7. Then he has also argued that the reports of the commissioner show that books of accounts of the business of the petitioner were found lying in the disputed Cabin which shows that the petitioner was in possession of the disputed Cabin. At the same time it has also been argued that certain documents relating to the fact of the possession by the respondent, were also found in the said Cabin which also indicate that there was some evidence on record to show that the respondent was in possession of the said Cabin on the date of the suit which includes a book of account in the name of the respondents and some other accounts. It is not explained as to how these documents were found in the disputed Cabin, if the petitioner was in possession thereof.

8. So far as the books of account of the petitioner are concerned, the respondent has alleged that after the institution of the suit, the petitioner broke open the lock and forcibly took possession of the disputed Cabin. In the process, some books of account could be introduced in the said suit Cabin and therefore, petitioner's books of account could be found in the suit Cabin, but this does not show *prima facie* case of possession with the petitioner.

9. Another aspect of the case is that the learned advocate for the petitioner has argued that the document in question Mark 3/1 is without any Stamp and it has not been registered. Let us take it it is a mortgage document, and it requires to be stamped and it is also required to be compulsorily registered. Let us take it that these two procedure have not been followed, yet document can be taken into consideration for the purpose of showing *prima facie* possession in favour of the respondents. It may be considered that nowhere the petitioner has claimed that he has not executed these document Mark 3/1. This shows that there is a *prima facie* case of these document Mark 3/1. Now once the document is there, then it shows that the respondent was put in possession of the disputed Cabin in May, 1994 and he was to continue in respect of the said Cabin till May, 1996. It is not on record that the respondent has voluntarily handed over the possession of the disputed Cabin to the petitioner in May, 1996 or thereafter, therefore, when the petitioner had put the respondent in possession in

May, 1994, it can reasonably be inferred that the respondent continued to be in possession even after May, 1996.

10. It is also submitted that respondent has taken two inconsistent pleas. First plea is that he is a tenant and second plea is that he is a mortgagee. Now, so far as the first plea is concerned, even if inconsistent plea raised, Civil Law does not debar a party from taking such inconsistent plea. Moreover, it can be considered at the appropriate stage, not at the *prima facie* stage.

11. It has also been argued that though the possession is said to have been forcibly taken away in October, the application Ex.54 has been filed very late. Here, it has also to be taken into consideration that soon after the alleged taking possession, the respondent had filed a Police complaint on 15th October, so there was no delay in disclosing the fact of forcible dispossession.

12. Then it is a fact that two courts below have recorded concurrent findings of fact that the petitioner was not in possession of the suit Cabin and the respondent was in possession thereof on the date of the suit. In view of these two concurrent findings of fact, it would be very difficult for this Court to interfere with this findings of fact in this Civil Revision application.

13. Moreover, so far as the Commissioner's Reports are concerned, they cannot be used for the purpose of proving possession for either of the two sides.

14. It is also argued that four independent witnesses have filed affidavit at Mark 31/1 to 31/4 and they have supported the case of the petitioner. But from the said affidavits it is not clear that as to how they explained the possession between 1994 and 1996 and they also have not explained when the possession was handed over by the respondents to the petitioner, whether it was May, 1996 or it was thereafter or before it. Therefore, the affidavits do not prove *prima facie* case.

15. The two courts below have recorded concurrent finding of facts. The orders are discretionary orders and the two courts below had jurisdiction to entertain the matter before them and they have exercised jurisdiction. It is not shown that the two courts below have committed any material irregularity relating to the

jurisdiction in deciding the application Ex.5 and 54 before them. In above view of the matter, it is not possible for this Court to record a different finding of fact.

16 This is being a Civil Revision Application, this Court is having very limited power and in view of the aforesaid set of facts and circumstances of the case, this is not a fit case to interfere with the concurrent finding of facts recorded by the two courts below. This Civil Revision Application, therefore, deserves to be dismissed and is accordingly dismissed with costs of the respondents. Rule discharged accordingly. Interim relief granted earlier stands vacated.

17. At this stage, learned advocate for the petitioner prays that the final order of this Civil Revision Application may be suspended for a period of six weeks with a view to enable the petitioner to approach higher court for appropriate relief. Learned advocate for the respondent objects, however, with a view to provide an opportunity to the petitioner, interim relief granted earlier is ordered to be extended for a period of four weeks from (the date of order of this judgement) today.

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